

NEW YORK STATE MUSICAL AND THEATRICAL TAX CREDIT PROGRAM GUIDELINES

PROGRAM PURPOSE

The New York City Musical and Theatrical Tax Credit Program is a program designed to jump start the entertainment industry and support tourism in New York City. The Program encourages Musical and Theatrical productions to begin performances sooner and come back stronger. The Program was implemented to provide economic incentives to theatrical production in NYC and to offset some of the additional costs associated with producing a show as New York's economy continues to recover from the Covid-19 pandemic.

PROGRAM OVERVIEW

The New York City Musical and Theatrical Tax Credit Program provides incentives to qualified production companies that are principally engaged in the production of qualified musical or theatrical productions and perform in a qualified production facility and incur costs associated with the creation and ongoing performances of these musical and theatrical productions.

AMOUNT OF CREDITS AVAILABLE

Program tax credits of \$300 million can be allocated and used to encourage qualified production companies to perform and conduct productions at qualified production facilities in New York County (Borough of Manhattan).

Productions in Level 1 qualified New York City production facilities

Companies producing a qualified musical and theatrical production in a Level 1 qualified New York city production facility can receive tax credits of 25 percent of qualified production expenditures up to \$3 million per production. A Level 1 qualified New York city production facility is a facility in Manhattan in the area bounded by and including 41st Street, 54th Street, 6th Avenue and 9th Avenue; in which live theatrical productions are intended to be primarily presented; containing five hundred seats or more along with at least one stage and additional necessary amenities for theatrical productions; and for which live theatrical productions constitute 75 percent or more of gross receipts for the facility.

Productions in Level 2 qualified New York City production facilities

Companies producing a qualified musical and theatrical production in a Level 2 qualified New York city production facility can receive tax credits of 25 percent of qualified production expenditures up to \$350,000, provided that the qualified musical and theatrical production have

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a production budget of at least \$750,000 and incur at least \$750,000 in qualified production expenditures. A Level 2 is a facility in Manhattan; in which live theatrical productions are intended to be primarily presented; containing one hundred seats or more along with at least one stage and additional necessary amenities for theatrical productions; and for which live theatrical productions constitute 75 percent or more of gross receipts for the facility.

ELIGIBILITY CRITERIA

To qualify, a musical and theatrical production must be a for-profit, live, scripted dramatic performance by one or more performers of a narrative presentation with or without musical performances and/or accompaniment that, in its original or adaptive version, is performed in a Level 1 Qualified New York city production facility or a Level 2 qualified New York City production facility that has its first paid performance on or before June 30, 2025.

A qualified musical and theatrical production shall not include ballet, opera, musical solo, group, band or orchestra performance, or solo, duo or several performers' stand-up comedy performances.

For the purposes of this Program, the Department shall make final determinations on which productions meet these criteria.

The credit period of a qualified production begins on the production start date and ends on the earliest of the following:

- 1) the date the production has expended sufficient qualified production expenditures to reach its credit cap;
- 2) September 30, 2025; or
- 3) the date the qualified production closes.

The production start date is the date that is up to twelve (12) weeks prior to the first performance of the qualified production. The first performance means the first paid public performance of the qualified production after April 19, 2021. *However, if a production was first performed in a qualified New York City production facility prior to the state disaster emergency pursuant to executive order 202 of 2020, it shall still be treated as a qualified musical and theatrical production with a start date that begins after April 19, 2021.*

The date the production closes is (1) the same date as final performance date if the production has reached its cap; or (2) the same date as final performance date if the program expires, i.e., September 30, 2025; or 3) the date after the production's final paid public performance on which the move of all physical production assets (i.e., sets, costumes, lighting and audio equipment) from

the qualified New York City production facility to their subsequent facilities (e.g., venues, vendor facilities and storage facilities within New York State) is complete and all qualified costs are paid.¹

An applicant shall be required to complete an initial application, which includes a project summary, a production schedule, the venue where the production will be performed and financial information about the production (i.e., production and operating budgets; estimated weekly payroll). In addition, a complete initial application shall include:

- (1) a diversity and arts job training program plan outlining the proposed method(s) of participating in a New York state diversity and arts job training program;
- (2) a public access and availability plan outlining the ways the applicant will ensure that the production is available and accessible for low or no-cost to low-income New Yorkers; and
- (3) an attestation that the applicant intends to comply with the legal requirement to contribute to the New York state council on the arts cultural program fund an amount up to fifty percent of the total credits received if the production earns ongoing revenue prospectively after the end of the credit period that is at least equal to two hundred percent of its ongoing production costs, with such amount payable from twenty-five percent of net operating profits, such amounts payable on a monthly basis, up until such fifty percent of the total credit amount is reached.

Any funds deposited shall be used for arts education programs, and arts and cultural programs.

Requirements for New York state diversity and arts job training programs

As part of the Initial Application, an applicant submits a *diversity and arts job training program plan* outlining the proposed method(s) of participating in a New York State-approved diversity and arts job training program. The purpose of the training program is to provide paid, multi-year training, mentoring and networking opportunities to support fellows for developing careers in the industry.

Pre-approved formalized industry fellowship programs

Participating in a fellowship program may satisfy the requirement to participate in a New York State-approved diversity and arts job training program. The following formalized

¹ *When completing the Project Summary for the Initial Application, provide the best estimate of projected date the production will close (see page 14 of these Guidelines).*

industry fellowship programs are currently pre-approved to satisfy the training program requirement:

- The Theatre Leadership Project (info@ttltp.org)
- Black Theatre Coalition – *Fellowship Program* (tomandre@blacktheatrecoalition.org)

A production must explain its participation with said fellowship in the training program plan. Productions working with a pre-approved program may commence the fellowship prior to submitting the plan.

Self-operated fellowships

Productions seeking to self-operate a fellowship program, work with an independent non-preapproved program or submit a new formal program for approval, must seek approval before selecting a fellow. An applicant should feel free to reach out for approval of the *diversity and arts job training program plan* before submitting an initial application, as relevant.

Fellowship programs may be submitted to New York State for approval by contacting Empire State Development (ESD) at musictheatercredits@esd.ny.gov or calling 212-803-2330.

Approval of fellowships will be based on the following criteria:

Production Type	LEVEL 1	LEVEL 2	Limited run / applying for credits \$1m or less
Fellowship Content	<ul style="list-style-type: none"> • May be part of either a formalized industry fellowship program (BTC, TTLP) or self-operated by the production company, producer or general manager. • Must have a clear outlined on-boarding/mentorship/training program with a specific mentor, exposure to senior members of the qualified production production/creative team and regular education opportunities about the industry. • Must have the ability to offer networking opportunities within the theatre community, including invitations to industry 		
Fellowship duration	Minimum of 6 months	Shorter fellowships or fellowships shared with two or more productions may be considered by ESD	
Full time	Full-time (at least 35 hours a week) employment		
Salary	Minimum annualized salary shall be at least \$42,250 (\$812.50 / week)		Minimum annualized salary less than \$42,250 considered by ESD in extraordinary circumstances
Recruitment	Recruitment shall include efforts throughout New York state. Applicants are encouraged to recruit through SUNY theatrical programs outside of New York City.		
Fellow Backgrounds	<ul style="list-style-type: none"> • Participants should be from communities currently underrepresented within the theatre industry, to ensure the theatre industry is reflective of New York State’s diversity. • All fellows shall reside in New York State during duration of fellowship. 		
Fellowship Start	Fellowship must be commenced or committed to during the credit period.		

Employment in a position may be deemed a “fellowship” if it fits the above criteria, regardless of whether it is called a fellowship or not, provided the decision to create such position or to place a fellow into an existing position occurs after applying to the Program or with the prior approval of New York State and meets the principal purpose of achieving the goals of increasing diversity and retention across the theatre industry’s workforce and mentoring diverse talent²

²Positions filled to simply meet a current workforce need should not be substituted for a fellowship unless the applicant can demonstrate that the goals of and commitments to the position are designed to achieve the same purpose of a fellowship, including mentoring, training, networking opportunities and the applicant’s sustained support for increasing diversity and supporting the interests and success of underrepresented groups as managers and leaders in the commercial theater production industry.

When a production company is working on multiple productions, the above criteria must be satisfied separately for each production receiving a tax credit.

- For example, a single six-month fellowship with a lead producer satisfies solely one production, even if such lead producer has multiple productions. A producer with two productions in Level 1 qualified New York city qualified production facilities and two fellows during a six-month period, or a general manager with one fellow for a 12-month period working on two shows simultaneously, shall each be deemed as satisfying this criterion for two productions.

However, in an effort to ensure a quality experience for fellows, ESD will consider combining the duration criteria for multiple limited engagements or productions at level 2 qualified production facilities if it allows a fellow to continue to work with a department or artist.

- For example, a general manager with a production at a level 1 qualified New York city production facility and two productions at level 2 qualified production facilities could discuss with ESD the possibility of a fellow working for a twelve-month period across these three productions if they satisfied the other criteria.

Waiver Request when unable to participate in a fellowship program

An applicant may explain in the *diversity and arts job training program plan* why it is unable to participate in a fellowship program and upon Departmental approval may, in lieu of participating in a fellowship program, make payments to approved New York State theater fellowships. The production must outline its inability to participate in a fellowship program and its planned contributions in its *diversity and arts job training program plan*.

Payment to an approved theatrical fellowship program shall be at least the lesser of \$35,000 or 5 percent of its tax credit based upon final qualified expenses.

As part of the final application, applicants are required to report on the report template provided by the department on the diversity and arts job training program plan. The diversity and arts job training program report should include a narrative that details how the production participated in a New York State-approved diversity and arts job training program. The report should summarize the plan that was implemented and demonstrate how the criteria indicated above were met. The report should articulate the areas of the plan that were completed as well as areas where the production may have deviated from the original plan and why.

In instances where a waiver was issued, the report should include information on the amount(s) and recipient(s) of donations. Applicant must upload documentation as evidence of such donations.³

³ If the required donations are \$35,000, then the donations must be made prior to submission of the final application and evidence provided that such donations were made. If the required amount is less than \$35,000 and therefore is

Requirements for public access and availability

In order to fulfill a production's requirement under the New York City Musical and Theatrical Production tax credit program that it *create and implement a plan to ensure that their production is available and accessible for low-or no-cost to low income New Yorkers*, as part of the application the production must submit a public access and availability plan outlining the ways it will ensure that its production is available and accessible for low-or no-cost to low income New Yorkers.

The *public access and availability plan* shall outline how a production will meet the following minimum requirements:

- During the first year of performances after the first public performance it shall provide to distribution networks approved by New York State, an amount of tickets equal to or in excess of twice the capacity of the relevant qualified musical and theatrical production's theatre capacity.
- For a production which is open for less than one year after its first performance this obligation shall be pro-rated by the number of performance weeks (*i.e. if a theatre has 1,400 seats and is open for 39 weeks, its obligation would be 2,100 over the course of its run⁴*);
- For productions in a Level 1 qualified New York city production facility, at least 50 percent of such tickets shall be offered at a cost of no more than \$20, (which may be located anywhere in the facility), and the remainder of the tickets shall be offered at a cost of no more than \$40, (which must be in the front mezzanine and orchestra sections), to low-income residents of New York State. For productions in a Level 2 New York city qualified production facility, tickets shall be offered at a cost of no more than \$20 and can be anywhere in the facility. Any sales fees or surcharges, excluding the facility fee, related to such tickets shall not exceed \$4 per ticket;
- Said tickets shall be for productions which are open to the general public and not at rehearsals or shows dedicated only to ticket giveaways, without the approval of New York State;

5% of the tax credit, applicant may wait until ESD has completed its review of the final application and determined the tax credit before making the required donations. Provided however, ESD will notify applicant when the tax credit has been determined and applicant must upload documentation as evidence of such donations before a tax credit certificate is issued.

⁴ Rounding to whole numbers: $(1400 \text{ seats} \times 2) / 52 \text{ weeks} = 54$; $54 \times 39 = 2106$

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- Tickets should be made available across performances throughout the week and run in order to avoid high numbers of tickets being made available and not utilized;
- Provide a list of community- based organizations or educational institutions serving low income residents in the New York City, Long Island and Mid-Hudson regions that the production company entered into an agreement with to distribute the tickets to low income residents served by those community- based organizations. A contact person and contact information for each such organization must be provided and copies of any written agreements should be available for review by ESD if requested;
- A production may satisfy the public access and availability requirement by partnering with the Theater Development Fund (TDF) which is partnering with community-based organizations serving low-income residents of New York State. A production may outline its partnership with TDF in its public access and availability plan. TDF will provide organization contact info and have agreements available on request. When partnering with TDF all of the above minimum requirements apply. Productions may provide a letter from TDF to ESD to demonstrate that they have met the requirements.

The specific performances and allocations shall be at the qualified New York city musical and theatrical production company’s discretion.

As part of the final application, an applicant is required to complete the *public access and availability plan report template* provided by the department to describe the implementation of the public access and availability plan outlining how the production met the requirement under the New York City Musical and Theatrical Production tax credit program that it create and implement a plan to ensure that the production is available and accessible for low-or no-cost to low income New Yorkers. The report includes a narrative with relevant attachments, summarizes the plan laid out in the initial application and describes what the production actually did. This includes areas where the production followed through on its plan as well as areas where the production may have deviated from the plan and why. The report includes the total amount of seats in the theater, length of run of the show, amount of tickets which were made available, amount of tickets which were utilized and through which channels/community-based organizations the tickets were offered and utilized.

The Department, in its sole discretion, shall evaluate each Applicant’s implementation of their Ticket Availability plan (as documented in final application) on its merits and may modify requirements for such Plan based on unanticipated factors, such as unexpected show closure.

Profit Distribution

Applicant must agree to contribute to the New York State Council on the Arts Cultural Program Fund an amount up to fifty percent of the total credits received if the production earns ongoing revenue prospectively after the end of the credit period that is at least equal to two hundred percent of its ongoing production costs, with such amount payable from twenty-five percent of net operating profits, such amounts payable on a monthly basis, up until such fifty percent of the total credit amount is reached.

Payment shall be made by check or wire to the Department of Taxation and Finance, Division of Treasury. For additional questions or information about making a payment productions should contact Christopher Curtis, Deputy Commissioner and State Treasurer, at Christopher.Curtis@tax.ny.gov

Net operating profits shall be defined, for the purposes of this requirement, as all ongoing revenue minus all ongoing production costs and ongoing marketing and advertising costs and shall be calculated on a quarterly basis.

Ongoing production costs shall be defined, for the purposes of this requirement, as weekly operating expenses associated with the production after the end of the credit period, not including marketing and advertising as reflected on a quarterly basis.

Ongoing revenue prospectively after the end of the credit period shall be defined, for the purposes of this requirement, as all gross weekly box office revenues after the end of the credit period as reflected on a quarterly basis.

If a production's credit period ends because the production closed before the \$3 million or \$350,000 credit cap was reached or the Program end date of September 30, 2025 occurred, the evaluation of profits and distribution is not applicable. The evaluation of profits and distribution is applicable for those productions which continue to run after the credit cap has been reached.

For productions that remain open after the credit period ends, the quarterly periods are calendar year quarters used commonly within the industry, i.e. January to March, April to June, July to September and October to December.

The first quarterly period for evaluating ongoing revenues, production costs and net-profits will begin the first day following the end of the credit period and extend through the end of the last day of that calendar year quarter. For instance, if the credit period ends on February 6th, the first quarterly period begins on February 7th and ends on March 31st. All subsequent quarterly periods will begin on the first day of the calendar year quarter and end on the last day of such quarter.

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If the evaluation of net profits for the first quarterly period demonstrates that there are profits to be distributed, the first payment will be due by the last day of the first month succeeding the end of that quarterly period. In this instance, the quarterly period begins on February 7th and ends on March 31st and the first payment will be due by April 30th. All subsequent payments will be due by the end of the month as well.

The end date for profit distributions is December 31, 2025.

Production companies will be required to submit a proposed payment schedule for review and approval by ESD at the end of each quarterly period up until 50% of the tax credit threshold is reached and all obligations incurred have been repaid.

A payment schedule can be proposed to smooth out the cash flows and minimize large lump sum payments in any quarter. Provided however, the payment schedule cannot extend beyond December 31, 2025.

Provided below is an example to illustrate the process:

CTI Production company reached its credit cap of \$3 million for its production of *The Return of Broadway* on February 6, 2022 based on its expenditures of \$12 million in qualified costs by that date.

- For the period February 7, 2022 through March 31, 2022 ongoing revenues were \$2.4 million and ongoing production costs were \$1.2 million. The ongoing revenue is 200% of the ongoing production costs. CTI Production must begin paying back 50% of its \$3 million tax credit (\$1.5 million) from 25% of its net profits of \$1.2 million, or from \$300,000 of the net profits.

The company proposes a payment schedule of 10 months (\$30,000/month) and makes payments totaling \$90,000 in April, May and June 2022.

- For the period April 1, 2022 to June 30, 2022, CTI Production's ongoing revenues were \$2.4 million and ongoing production costs were \$1.2 million. The 200% threshold is reached and 25% of its net profits equal \$300,000. The company's total profit distribution obligation is now \$600,000, of which \$90,000 has been distributed, leaving a balance of \$510,000.

The company proposes a revised payment schedule of 17 months to keep its payments at the same \$30,000 per month level and makes payments totaling \$90,000 in July, August and September of 2022.

- For the period July 1, 2022 to September 30, 2022, CTI Production’s ongoing revenues were \$1.8 million and ongoing production costs were \$1.2 million. The 200% threshold is not reached so CTI Production company does not incur any additional profit distribution obligation. The total obligation remains at \$600,000 of which \$180,000 has been distributed, leaving a balance of \$420,000.

The company proposes a revised payment schedule of 14 months to keep its payments at the same \$30,000 per month level and makes payments in October, November and December of 2022.

- For the period October 1, 2022 to December 31, 2022, ongoing revenues were \$800,000 and ongoing production costs were \$1 million. The 200% threshold is not reached so CTI Production company does not incur any additional profit distribution obligation. The total obligation remains at \$600,000 of which \$270,000 has been distributed, leaving a balance of \$330,000.

CTI Production proposes a revised payment schedule of 11 months to keep its payments at the same \$30,000 per month level and makes payments in January, February and March of 2023.

The production *Return of Broadway* closes on March 31, 2023.

- For the period January 1, 2023 to March 31, 2023, ongoing revenues were \$800,000 and ongoing production costs were \$1 million. The 200% threshold is not reached so CTI Production company does not incur any additional profit distribution obligation. The total obligation remains at \$600,000 of which \$360,000 has been distributed, leaving a balance of \$240,000.

CTI Production proposes a revised payment schedule of eight months to keep its payments at the same \$30,000 per month level and makes eight payments from April 2023 through November 2023. Once the final payment is received, no further payment nor reporting is required.

The chart below illustrates the example.

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Profit Distribution Schedule – Example						
CREDIT PERIOD ENDS - FEBRUARY 6, 2022						
Period	Ongoing Revenues 200% of ongoing costs?	Net Profits	25% for Distribution	Cumulative Total of Net Profits To Be Distributed	Payments	Balance
\$\$ in thousands						
2/7/22 to 3/31/22	Y	1,200	300	300	-	300
4/1/22 to 6/30/22	Y	1,200	300	600	90	510
7/1/22 to 9/30/22	N	-	-	510	90	420
10/1/22 to 12/31/22	N	-	-	420	90	330
1/1/23 to 3/31/23	N	-	-	330	90	240
PRODUCTION CLOSES SEPTEMBER 30, 2023						
4/1/23 to 11/30/23	n/a	n/a	n/a	240	240	-

This example illustrates one possible scenario. There will of course be many variations based on the revenues, costs, net profits, tax credits and payment schedules specific to each production. Nonetheless, the process is the same:

1. Credit Period Ends (Production Remains Open)
2. Measurement of ongoing revenues and costs begins
3. A schedule of payments is proposed and payments resume for the next three months following measurement of profits.

The process is repeated with further payments being made until the balance of the profit distribution obligation is paid off and no further payments are required.

An applicant that claims and receives a tax credit under this program shall submit an annual report to the Department detailing their contributions, as applicable, to the New York state council on the arts cultural program fund. Such requirement shall expire on the earlier of:

- 1) December 31, 2025; or
- 2) upon repayment of 50% of the total credit received by the applicant; provided, however, if a production closes and the applicant demonstrates that the production is not subject to the requirements above, then the applicant no longer needs to submit an annual report.

QUALIFIED FACILITY

A Level 1 Qualified New York city production facility means a facility located in Manhattan in the area bounded by and including 41st Street, 54th Street, 6th Avenue and 9th Avenue

- (i) in which live theatrical productions are or are intended to be primarily presented,
- (ii) that contains at least one stage with a seating capacity of five hundred or more seats, and dressing rooms, storage areas, and other ancillary amenities necessary for the qualified musical and theatrical production, and
- (iii) for which receipts attributable to live theatrical productions constitute seventy-five percent or more of gross receipts of the facility.

A level 2 Qualified New York city production facility means a facility located in Manhattan

- (i) in which live theatrical productions are or are intended to be primarily presented,
- (ii) that contains at least one stage with a seating capacity of one hundred or more seats, and dressing rooms, storage areas, and other ancillary amenities necessary for the qualified musical and theatrical production, and
- (iii) for which receipts attributable to live theatrical productions constitute seventy-five percent or more of gross receipts of the facility.

QUALIFIED COSTS

Qualified costs are any costs paid by the applicant for tangible property used and services performed directly and predominantly in the production of a qualified musical and theatrical production within the state including:

- (1) expenditures for design, construction and operation, including sets, special and visual effects, costumes, wardrobes, make-up, accessories and costs associated with sound, lighting, and staging;

(2)all salaries, wages, fees, payroll tax expenditures, fees for workers’ compensation insurance, and other compensation including related benefits for services performed of which the total allowable expense shall not exceed \$200,000 per week;

(3)technical and crew production costs, such as expenditures for qualified production facilities, or any part thereof, props, make-up, wardrobe, costumes, equipment used for special and visual effects, sound recording, set construction, and lighting; and

(4)Up to 50% of the advertising, marketing and publicity costs (including personnel) incurred and paid in NYS by the applicant.

For the purposes of this definition, expenses may only be counted once on a single qualified production.

NON-QUALIFIED COSTS include:

- Airfare
- Hotels
- Per Diems
- Entertainment
- Insurance (premiums, deductibles and all costs covered by insurance, except workers’ compensation)
- Licenses, certification, union membership
- Legal Fees
- Parking tickets
- Rights/Management
- Royalties
- EDI costs
- Shipping/Transportation(to/from) outside New York State
- Advertising/Salaries and expenses 50% Qualified
- Marketing/Publicity/ Salaries and expenses 50% Qualified

For the purposes of this Program, the Department shall make final determinations on which costs not cited in statute or regulations are qualified or non-qualified.

HOW TO APPLY

Applicants complete and submit the Project Summary Form online. All other documents which comprise a complete application (*see Chart of Application Materials for the New York City Musical and Theatrical Production Credit*) are submitted through a secure file transfer system.

A complete initial application must be submitted by an applicant to prove its eligibility for the Program and contains information concerning projected production expenditures including a production budget and weekly payroll report.

Initial applications must be submitted prior to the first paid performance and submission **no later than 10 days prior to such performance is highly encouraged.**

Initial applications may be submitted no later than June 30, 2025.

Final project summaries must be submitted to the Department no later than 90 days after the production closes or 90 days following the program end date of September 30, 2025, whichever comes first. If a qualified production company chooses to have its final application reviewed by a pre-qualified CPA firm, the final project summary must be submitted to the pre-qualified CPA firm selected to review the final application by the due date above and the Department must be notified by the qualified production company that the final application will be submitted to such firm.

As part of the final application, applicants must submit proof of the execution of their diversity and arts job training and public access and availability plans listed in the eligibility section above.

When submitting an application for the New York City Musical and Theatrical Production Credit, **all materials as indicated in the chart below must be submitted in order for the application to be deemed complete.** Refer to the Chart of Application Materials for the Tax Credit when completing an initial and final application.

[Online Application Form](#)

[Chart of Application Materials](#) for the New York City Musical and Theatrical Production Tax Credit

APPLICATION INSTRUCTIONS

Applications must be submitted according to the dates indicated above.

When an initial application is deemed complete, the Program Office will notify an applicant of eligibility and issue a certificate of conditional eligibility.

When the credit period ends, (see p.2) a final application must be submitted with actual project information either directly to the Department for review, or to a qualified CPA firm for an Agreed Upon Procedures Report to be submitted with the final application to the Department. When the final application is deemed complete and approved, the Department

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will issue a certificate of tax credit to the Applicant entity and provide to the primary contact listed in the final application.

APPLICATION MATERIALS

The application consists of several documents as follows:

PROJECT SUMMARY

Initial - A project summary is submitted online as part of the initial application and consists of projected information about the musical and theatrical production necessary to determine eligibility.

Final - A project summary is submitted online with actual production information for the final application.

Please note the following dates when completing the Project Summary for Initial and Final Applications:

Production Start: is the date that is up to twelve (12) weeks prior to the first paid performance of the qualified production.

First Paid Performance: means the first paid public performance of the qualified production after April 19, 2021⁵.

Last Paid Performance: is the last paid public performance of the qualified production after

Production Closure: the date the production closes is (1) the same date as final performance date if the production has reached its cap; or (2) the same date as final performance date if the program expires, i.e., September 30, 2025; or 3) the date after the production's final paid public performance on which the move of all physical production assets (i.e. sets, costumes, lighting and audio equipment) from the qualified New York City production facility to their subsequent facilities (e.g., venues, vendor facilities and storage facilities within New York State) is complete and all qualified costs are paid.

When completing the Project Summary for the Initial Application, provide your best estimate of the projected date of the production closure.

⁵ If a production was first performed in a qualified New York City production facility prior to the state disaster emergency pursuant to executive order 202 of 2020, it shall still be treated as a qualified musical and theatrical production with a start date that begins after April 19, 2021.

Program End: is September 30, 2025 and means that only qualified production costs paid up to this date can be included in the application.

WEEKLY PAYROLL REPORT

A report to capture the weekly payroll expenses for the salaried employees employed by the qualified musical and theatrical production must be submitted with the initial and the final application. This includes employees hired by the venue/QPF. There is a standard template (MS Excel) for this report.

The Weekly Payroll Report can be found [here](#).

This form is required to document all the wages paid to qualified employees who worked on a qualified musical or theatrical production in New York City and whose wages are being counted toward the qualified expenses. This form should also include the total number of qualified employees hired by the production and by the venue/QPF for each week in the credit period.

Initial application costs are estimated costs. If appropriate, costs for one week, based on estimated costs, may be extrapolated over the number of weeks in the credit period.

The Final application report must reflect actual costs.

PAYROLL SUMMARY REPORT (Final Application)

A report from the payroll company that covers the entirety of the credit period. The report should provide the total wages and other payments and taxes for each employee.

PRODUCTION BUDGET (Initial Application)

Production budget means all estimated costs to be incurred or paid before the first public performance.

The estimated budget is submitted as part of the initial application.

GENERAL LEDGER REPORT (Final Application)

This report represents the accounting of production expenses incurred and paid during the credit period and can be generated using any software programs designed specifically for musical and theatrical production accounting.

The General Ledger Report is required as part of the final application and consists of the complete general ledger and separate GL reports that correspond with the following categories identified on the project summary:

Qualified Costs NYS, Non-Qualified Costs NYS; Non-Qualified Costs Outside NYS.

There is no standard template for this report, but each report must include:

- The date the expense was incurred
- The vendor name or payee
- Budget code
- The amount of the transaction
- Item description
- The GL reports are required to be submitted as part of the final application upload of documents
- Deductions for weekly labor over the \$200,000 weekly cap; and 50% deductions for all marketing/advertising/publicity costs incurred in NYS.

DIVERSITY AND ARTS JOB TRAINING PROGRAM PLAN

The initial application should include a plan outlining how the production intends to meet this requirement.

The final application should include a report outlining how the production met this requirement. There is a standard template (MS Excel) for this report.

The Diversity and Arts Job Training Report can be found [here](#).

If the production was approved for a waiver on its initial application and the required amount of the donations is less than \$35,000 and therefore is 5% of the tax credit, applicants may wait until ESD has completed its review of the final application and determined the tax credit before making the required donations. Provided however, ESD will notify applicant when the tax credit has been determined and applicant must upload documentation as evidence of such donations before a tax credit certificate is issued.

See details on pages 3 through 5.

PUBLIC ACCESS AND AVAILABILITY REPORT

The initial application should include a plan outlining how the production intends to meet this requirement. Productions partnering with TDF can submit a letter to demonstrate that the public access plan meets requirements.

The final application should include a report outlining how the production met this requirement. There is a standard template (MS Excel) for this report.

The Public Access and Availability Report can be found [here](#).

See details on pages 6 and 7.

THIRD PARTY CPA REVIEW OF FINAL APPLICATION

Qualified production companies applying for the New York City Musical and Theatrical Production Tax Credit can opt to have final applications reviewed by pre-qualified CPA firms and expedite approval.

Empire State Development (ESD) is offering an optional program for third party review of final applications. This is effective January 1, 2022 for the New York City Musical and Theatrical Production Tax Credit Program. This procedure enables productions that choose to participate to have their final applications reviewed by pre-qualified CPA firms according to agreed-upon procedures (AUPs) established and published by ESD. The reviews and reports prepared by the pre-qualified CPA firms must be submitted as a supplement to a production's final application.

ESD will review the final application and the CPA report for compliance with the agreed-upon procedures.

The Agreed Upon Procedures for the New York City Music and Theatrical Tax Credit Program are available on the website.

The final applications of those productions which do not choose the 3rd party review will be reviewed by ESD.

OTHER REQUIREMENTS

Please note the following other requirements that must be followed as part of the application evaluation and approval process.

RECORD RETENTION Each authorized and approved applicant must maintain records, in paper or electronic form, of any qualified production and/or post-production costs used to calculate its potential or actual benefit(s) under this program for a minimum of three years from the date of filing of the tax return on which the applicant claims the tax credit. The Department shall have the right to request such records upon reasonable notice.

FOIL DISCLOSURE The New York State Department of Economic Development is subject to the New York State Freedom of Information Law ("FOIL"), which governs public access to the records of government agencies (see Public Officers Law sections 84 through 90). You should be aware that some information submitted to the Department as part of any application to the Program becomes subject to legislatively mandated reports which will be made public, and that the Department will respond to requests for information.

SUMMARY

The New York City Musical and Theatrical Production Tax Credit is designed to jump start the entertainment industry and support tourism in New York City. The Program encourages Musical and Theatrical productions to begin performances sooner and come back stronger.

Broadway companies must agree to implement a diversity and arts jobs training plan and take actions to increase access to productions for low-income residents. Highly successful productions showing ongoing revenues more than two times their ongoing production costs after receiving a tax credit will need to contribute to the NYS Council for The Arts Cultural Program Fund up to fifty percent of the tax credit.

The Program is for three years and companies can receive credits for tax years beginning on or after January 1, 2021 but before January 1, 2026. Initial applications must be submitted prior to the first public performance and before June 30, 2025 and final project summaries no later than 90 days after the production closes or 90 days following the program end date of September 30, 2025, whichever comes first.

Review this guide to the Musical and Theatrical Tax Credit Program carefully.

Submit initial application materials prior to the first scheduled performance of the production for which you seek a tax credit through this Program and you are encouraged to submit the application materials **no later than 10 days prior to such performance.**

The initial application is an eligibility determination. The allocation of the credit is based on the first paid performance date and will be made upon the receipt of a

complete final application and determination by ESD that the tax credit certificate can be issued.

Applications must be complete as outlined in these guidelines. If your application is incomplete, you will be notified.

THIS IS A NEW YORK STATE PROGRAM.

PLEASE DIRECT QUESTIONS TO:

EMPIRE STATE DEVELOPMENT MUSICAL AND THEATRICAL TAX CREDIT PROGRAM

212-803-2328 musictheatercredits@esd.ny.gov